UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Johnny M. Vanover, Jr.,	)	**C/A No. 3:11-2836-DCN-JRM**
Plaintiff,	)	
vs.	)	**Report and Recommendation**
Officer R. Cropp, *Richland County Sheriff Department*; Investigator David Unger, *Richland County Sheriff Department*,	)	
Defendants.	)	

Background of this Case

Plaintiff is a pre-trial detainee at the Alvin S. Glenn Detention Center in Columbia, South Carolina. The two Defendants are employed by the Richland County Sheriff's Department.

The above-captioned case arises out of a domestic dispute between Plaintiff and his "common law" spouse. Plaintiff had been arrested for assault upon a police officer. The Public Index for the Richland County Clerk of Court website, *see* http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2009GS4004573&CourtType=G&CaseType=Criminal&CourtAgency=40001&LastName=Vanover&FirstName=Johnny (last visited Oct. 27, 2011), reveals that this charge is Indictment No. 2011-GS-40-01227, which was true billed on March 10, 2011.[1] According to Plaintiff, his common law wife posted the

[1]A federal court may take judicial notice of factual information located in postings on governmental websites in the United States. *See In Re Katrina Canal Breaches Consol. Litig.*, 533

(continued...)

bond. While out on bond, Plaintiff and his common law wife got into an argument, during which Plaintiff "went and grab[b]ed" his shotgun. During the altercation, Plaintiff's common law wife pulled the trigger on the shotgun. As a result of the incident, Plaintiff was charged with two counts of attempted murder on January 27, 2011. The attempted murder charge was trued billed as Indictment No. 2011-GS-40-01228, along with Indictment No. 2011-GS-40-01229 (pointing and presenting a firearm) issued on the same day.[2]

Plaintiff contends that the two charges of attempted murder were not valid, that his court-appointed public defender has failed to protect his rights, and that no gun residue was found on Plaintiff. Plaintiff also complains about the actions of Judge Caroline Streater, who is a county magistrate for the Magistrate Court for Richland County. In his prayer for relief, Plaintiff seeks a federal investigation, a jury trial, a judgment of $50,000 for Defendants' violation of "clearly established" laws, and his freedom.

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F. Supp. 2d 615, 631-33 & nn. 14-15 (E.D. La. 2008) (collecting cases indicating that federal courts may take judicial notice of governmental websites, including court records); and *Williams v. Long*, 585 F. Supp. 2d 679, 686-88 & n. 4 (D. Md. 2008) (collecting cases indicating that postings on government websites are inherently authentic or self-authenticating).

[2]The Public Index shows an unrelated pending charge of assault and battery of a high and aggravated nature (ABHAN), Indictment No. 2009-GS-40-04573, which was true billed on June 19, 2009.

Discussion

Under established local procedure in this judicial district, a careful review has been made of the *pro se* complaint pursuant to the procedural provisions of 28 U.S.C. § 1915, 28 U.S.C. § 1915A, and the Prison Litigation Reform Act. The review has been conducted in light of the following precedents: *Denton v. Hernandez*, 504 U.S. 25 (1992); *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); *Nasim v. Warden, Maryland House of Corr.*, 64 F.3d 951 (4th Cir. 1995)(*en banc*); *Todd v. Baskerville*, 712 F.2d 70 (4th Cir. 1983); *Loe v. Armistead*, 582 F.2d 1291 (4th Cir. 1978); *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). Plaintiff is a *pro se* litigant, and thus his pleadings are accorded liberal construction. *See Erickson v. Pardus*, 551 U.S. 89 (2007)(*per curiam*); *Hughes v. Rowe*, 449 U.S. 5, 9-10 & n. 7 (1980)(*per curiam*); *Cruz v. Beto*, 405 U.S. 319 (1972). When a federal court is evaluating a *pro se* complaint or petition, the plaintiff's or petitioner's allegations are assumed to be true. *Fine v. City of New York*, 529 F.2d 70, 74 (2nd Cir. 1975). Even so, a plaintiff must plead factual content that allows the Court to draw the reasonable inference that the defendant is plausibly liable, not merely possibly liable. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Even when considered under this less stringent standard, however, the § 1983 Complaint is subject to summary dismissal. The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal district court. *Weller v. Department of Social Services*, 901 F.2d 387 (4th Cir. 1990).

The Supreme Court of the United States in *Wallace v. Kato*, 549 U.S. 384 (2007), held that the holding in *Heck v. Humphrey*, 512 U.S. 477 (1994), is not applicable to pre-trial detainees raising false arrest claims. Hence, the above-captioned case is not barred by the holding in *Heck v.*

Humphrey. Nevertheless, the issuance of the Grand Jury Indictments for attempted murder (No. 2011-GS-40-01228) and pointing and presenting a firearm (No. 2011-GS-40-01229) is affirmative evidence of probable cause sufficient to preclude any claim for false arrest. *See Gatter v. Zappile*, 67 F. Supp. 2d 515, 519 (E.D. Pa. 1999) (collecting cases holding that a grand jury indictment is affirmative evidence of probable cause), *affirmed*, 225 F.3d 648 (3rd Cir. 2000); *Sibdhannie v. Coffey*, No. CIV. A. 06-3394(PGS), 2006 WL 3780778 (D.N.J. Dec. 21, 2006) ("A grand jury indictment is affirmative evidence of probable cause sufficient to defeat claims for malicious prosecution and false arrest under § 1983."), *Provet v. South Carolina*, Civil Action No. 6:07-1094-GRA-WMC, 2007 WL 1847849 (D.S.C. June 25, 2007).

Plaintiff cannot obtain a criminal investigation or criminal charges against Defendants. *See Linda R. S. v. Richard D.*, 410 U.S. 614, 619 (1973) (a private citizen does not have a judicially cognizable interest in the prosecution or non-prosecution of another person); *Diamond v. Charles*, 476 U.S. 54, 64-65 (1986) (*applying Linda R. S. v. Richard D.* and collecting cases); *Nader v. Saxbe*, 162 U.S.App.D.C. 89, 497 F.2d 676, 679 nn. 18-19, 681 n. 27 (D.C. Cir. 1974) (n. 27: "Thus her [Linda R. S.'s] complaint in effect sought a judicial order compelling prosecution of a particular individual, a practice shunned by American courts.").

Closely on point is *Leeke v. Timmerman*, 454 U.S. 83, 86-87 (1981), which arose in South Carolina. In *Leeke v. Timmerman*, inmates who were allegedly beaten by prison guards sought criminal arrest warrants against the guards. The inmates presented sworn statements to a state magistrate, but the state magistrate, upon a Solicitor's request, declined to issue the warrants. In *Leeke v. Timmerman*, the Supreme Court of the United States reiterated its earlier holding in *Linda R.S. v. Richard D.*, and again ruled that a private citizen lacks a judicially cognizable interest in the

criminal prosecution of other persons. *Leeke v. Timmerman*, 454 U.S. at 86-87. In its opinion in *Leeke v. Timmerman*, the Supreme Court of the United States cited a similar precedent from the Supreme Court of South Carolina. *See* Id. at 87 n. 2, *citing State v. Addison*, 2 S.C. 356, 364 (1871).

Plaintiff cannot obtain his "freedom" in this civil rights action. *See Heck v. Humphrey*, 512 U.S. at 481 (stating that "habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within the literal terms of § 1983"); *Johnson v. Ozmint*, 567 F. Supp. 2d 806, 823 (D.S.C. 2008) (release from prison is not a remedy available under 42 U.S.C. § 1983).

Recommendation

Accordingly, it is recommended that the District Court dismiss the above-captioned case *without prejudice* and without service of process. Plaintiff's attention is directed to the Notice on the next page.

October 28, 2011
Columbia, South Carolina

Joseph R. McCrorey
United States Magistrate Judge

Notice of Right to File Objections to Report and Recommendation

Plaintiff is advised that he may file specific written objections to this Report and Recommendation with the District Judge. **Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections.** "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (*quoting* Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk of Court
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).